

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBERT J. MONTERROSA,)	CIVIL NO. 03-1417-JE
)	
Plaintiff,)	ORDER ADOPTING MAGISTRATE
)	JUDGE'S FINDINGS AND
v.)	RECOMMENDATION AND DENYING
)	DEFENDANTS' MOTION FOR SUMMARY
DR. VARGO, et al.,)	JUDGMENT
)	
Defendants.)	
)	

MOSMAN, J.,

On March 2, 2005, Magistrate Judge Jelderks issued Findings and Recommendation (docket #35) in the above-captioned case recommending that defendants' motion for summary judgment (#25) be denied. An objection to the Findings and Recommendation (#36) was received on March 18, 2005, and no response was received.

This court must conduct de novo review pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

Defendant contends that plaintiff fails to demonstrate deliberate indifference to his medical needs. Here, the magistrate judge relied not only on a verified complaint, which

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defendant argues is an insufficient basis to oppose summary judgment, but also on the medical records submitted by defendant to find that a question of fact exists regarding whether defendants were deliberately indifferent to plaintiff's hernia. This court agrees that such an issue of material fact exists and, therefore, ADOPTS the Findings and Recommendation denying defendants' motion for summary judgment as the opinion of this court.

IT IS SO ORDERED.

DATED: Portland, Oregon, May 17, 2005.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge